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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/667,036
Filing Date: September 22, 2003
Appellant(s): KARAOGUZ ET AL.

Joseph M. Butscher
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 7, 2009 appealing from the Office action mailed February 4, 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,388,714

Schein

5-2002

Fischetti, Mark, "The Future of TV" Technology Review (November 2001), p.35-40

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schein (6,388,714) in view of Future TV (November 2001).

Schein discloses a system and corresponding circuits for a user to access content comprising providing billing support for the exchange of media, a first television display in a first home of a first user, a first storage in the first home, the first storage supporting media consumption by the first television display in the first home, and having a first network protocol address, a user interface for the selection and display of media content, at the first home, the user interface allowing at least one user to create at least one user defined media channel, wherein the at least one user selects media content for the at least one user defined media channel through the user interface, and

the at least one user specifies, through the user interface, times when the user selected media content will be made available on the at least one user defined media channel, the user interface displaying a graphical representation of the least one user defined media channel, each of the at least one user defined media channel comprising a sequence of user selected media content for consumption at times specified by the user, at least one server storing the media content, and having a second network protocol address, and server software that receives from the first home via a communication network a request for the delivery of media content, the request comprising information securing payment for delivery, and that responds by coordinating the delivery of the media content from the at least one server at the second network protocol address to the first storage at the first network protocol address for consumption by the first television display (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30--the user selects service or content, enters identifying information and password, along with payment instructions, and the media is delivered within the specified time period; the content may be delivered to television, computer, etc.); the media content comprises at least one of audio, a still image, video, and data (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); the first and second network protocol addresses are one of an Internet protocol (IP) address, a media access control (MAC) address, and an electronic serial number (ESN)(fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); the communication network comprises at least one of a cable infrastructure, a satellite network infrastructure, a digital subscriber line (DSL) infrastructure, an Internet infrastructure, an intranet

infrastructure, a wired infrastructure, and a wireless infrastructure (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); the communication network is the Internet (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); consumption comprises at least one of playing digitized audio, displaying a still image, displaying video, and displaying data (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); the information securing payment for delivery comprises at least one of a device ID, a public key for encryption, information related to services, information regarding payment terms, information regarding billing, and media push/access restrictions and limitations (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); the information securing payment for delivery is received via the communication network from a second user at a second home (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); at least one media peripheral communicatively coupled to the first storage, the at least one media peripheral providing at least a portion of the information securing payment for delivery, and the media content being delivered to the at least one media peripheral (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); the at least one media peripheral comprises at least one of a digital camera, a digital camcorder, a television, a personal computer, a CD player, a home juke-box, a multi-media gateway device, a multi-media personal digital assistant, a DVD player, a tape player, and a MP3 player (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); the identity of a user receiving media content is unknown to the at least one server (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); the communication network comprises at least one of a

cable infrastructure, a satellite network infrastructure, a digital subscriber line (DSL) infrastructure, an Internet infrastructure, an intranet infrastructure, a wired infrastructure, and a wireless infrastructure (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); the at least one server comprises at least one of a 3rd party service provider, a media storage server, and a broadband head end (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); the identity of a user receiving media is unknown to the at least one server (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); the information securing payment for delivery comprises at least one of a device ID, public key for encryption, information related to services ID, a public key for encryption, information regarding payment terms, information regarding billing, and media push/access restrictions and limitations (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); at least one circuitry and media peripheral communicatively coupled to the set top box the at least one media peripheral providing the media (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); at least one of billing and payment is secured before delivery of the media occurs (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); at least one interface for communicating via a broadband communication infrastructure, at least one processor operably coupled to the at least one interface and to storage containing executable code enabling creation by a first user of one or more media channels for distribution to an authorized second user at a second location remote from the first location, wherein the one or more media channels comprises media content selected by the first user and arranged according to times specified by the first user, and wherein each of the one or

more media channels comprises a sequence of media content selected by the first user, which is made available for consumption by the second user of the media exchange network at times scheduled by the first user (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); the broadband communication infrastructure comprises a cable network (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); the broadband communication infrastructure comprises a digital subscriber line (DSL) network (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); wherein the media content of a media channel is stored at the first location (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); at least a portion of the media content of a media channel is provided by a third party source remote from the first and second user locations (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); the media exchange network comprises a media exchange server that associates authorized users as members of a personal network (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); the media exchange server is located within the communication terminal of the first user (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); media content comprises one or more of digitized video, digitized audio and one or more digitized still images (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); wherein a first user is enabled to anonymously request delivery of media content from a third party to the second user (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); the sequence of media content selected by the first user is received by and stored at the location of the second user prior to the time of availability scheduled by the first user, for consumption at the

time of availability scheduled by the first user (fig. 14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); the sequence of media content selected by the first user is pushed to the communications terminal of the second user (fig. 14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); at least one server storing the media (fig. 14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); server software that receives a request for the delivery of the media, the request comprising information securing payment for delivery, and that responds by coordinating the delivery of the media from a storage or the at least one server to a television display for consumption (fig. 14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); at least one server at a first location, the at least one server configured to store media and server software that receives via a communication network a request for the delivery of the media, the request comprising information securing payment for delivery, and that responds by coordinating the delivery of the media from a storage at a second location to a television display at a third location for consumption (fig. 14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); the media comprises at least one of audio, a still image, video, and data (fig. 14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); the communication network comprises at least one of a cable infrastructure, a satellite network infrastructure, a digital subscriber line (DSL) infrastructure, an Internet infrastructure, an intranet infrastructure, a wired infrastructure, and a wireless infrastructure (fig. 14A-E; col. 14, line 18 to col. 15, line 30; and co1.19, lines 5-30); the communication network is the Internet (fig. 14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); information securing payment for delivery comprises at least one of

a device ID, a public key for encryption, information related to services, information regarding payment terms, information regarding billing, and media push/access restrictions and limitations (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30); at least one of billing and payment is secured before delivery of the media occurs (fig.14A-E; co1.14, line 18 to co1.15, line 30; and co1.19, lines 5-30). Schein does not specifically disclose customizing content or wherein the at least one user defined media channel is pushed from the first home to other authorized users at locations that are separate and distinct from first home. Future TV teaches that customization of tv content whereby users will be able to share information and customize all entertainment options (p.4, col.2-3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Future TV within Schein for the motivation of allowing users to eventually utilize the system in customizing and sharing programming.

(10) Response to Argument

The Appellant argues that Schein does not disclose "a user interface for the selection and display of media content, at the first home, the user interface allowing at least one user to create at least one user defined media channel, wherein the at least one user selects media content for the at least one user defined media channel through the user interface, and the at least one user specifies, through the user interface, times when the user selected media content will be made available on the at least one user defined media channel, the user interface displaying a graphical representation of the at least one user defined media channel, the at least one user defined media channel

comprising a sequence of the user selected media content for consumption at the times specified by the at least one user", customizing content, or "wherein at least one user defined media channel is pushed from the first home to other authorized users at locations separate and distinct from the first home" or to a second home.

In response, Schein discloses the following:

- a user interface for the selection and display of media content, at the first home" (The user may access the television schedule information on a computer network, such as the Internet. The user input device, such as a remote control is used to select and display television content--col.14, lines 18-30 and fig.10)
- "the user interface allowing at least one user to create at least one user defined media channel, wherein the at least one user selects media content for the at least one user defined media channel through the user interface, and the at least one user specifies, through the user interface, times when the user selected media content will be made available on the at least one user defined media channel" (The user may access the Internet for the television schedule guide and may configure the schedule guide or website for viewing and interacting directly online or for downloading the information. The user may call up favorite programming choices based on categories, such as actor or movie genre and select programs for viewing--col.14, line 55 to col.15, line 15, 12. The Examiner

is interpreting the user making his/her selection based on preference as being user-defined.)

- "the user interface displaying a graphical representation of the at least one user defined media channel, the at least one user defined media channel comprising a sequence of the user selected media content for consumption at the times specified by the at least one user." The user may select favorite programming choice based on the day or time--col.14, line 65 to col.15, line 50.)

Schein does not disclose customizing content or wherein at least one user defined media channel is pushed from the first home to other authorized users at locations separate and distinct from the first home or to a second home. Future TV teaches a plan to customize television and push user-defined channels. Future TV further states that this is the direction that television is moving since 1999 (p.40, col.2-3). The Examiner found it to have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Future TV within Schein for the motivation of allowing users to customize and share programming.

The Appellant argues that Future TV does not cure the deficiencies of Schein. In response, Future TV teaches a detailed plan to customize television and push user-defined channels. Future TV further states that this is the direction that television is moving since 1999 and discusses the ways in which companies may go about customizing access.

The Appellant further argues that Future TV is forward looking and does not describe the technology as it existed at the time the article was written. In response, the Appellant's assertion is a conclusion, and there is no support on record to the contrary.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Lalita M Hamilton/

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